

## **ADMINISTRATIVE PANEL DECISION**

**BOUYGUES v. Bill Cousin**

**Case No. D2024-2558**

### **1. The Parties**

The Complainant is BOUYGUES, France, represented by Nameshield, France.

The Respondent is Bill Cousin, France.

### **2. The Domain Name and Registrar**

The disputed domain name <bouygues-contructionsuk.com> is registered with EuroDNS S.A. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 24, 2024. On June 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Whois Privacy, Whois Privacy (enumDNS dba)) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 2, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on the same day.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 23, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 24, 2024.

The Center appointed Louis-Bernard Buchman as the sole panelist in this matter on July 29, 2024. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant is a French conglomerate active in the construction, telecoms, media and energy services sectors, and its shares are listed on the Paris stock exchange. It was founded by Mr. Francis Bouygues in 1952. The Complainant operates in over 80 countries, and its turnover was EUR 56 billion in 2023.

The Complainant's subsidiary Bouygues Construction is a leader in sustainable construction techniques, which designs, builds and operates buildings and structures with around 58,000 employees worldwide. This subsidiary owns a domain name incorporating the BOUYGUES CONSTRUCTION Mark, <bouygues-construction.com>, registered on May 10, 1999.

The Complainant owns a large portfolio of trademark registrations containing the term BOUYGUES alone or in combination with other terms, including International Trademark BOUYGUES CONSTRUCTION No. 732339, registered on April 13, 2000 (hereinafter referred to as: the "Mark").

The disputed domain name was created on June 21, 2024.

The Complainant provided evidence that the disputed domain name resolved to a parking page with commercial links and that mail exchange ("MX") servers were configured on the disputed domain name. At the time of this decision, the disputed domain name still resolves to that parking page displaying commercial links.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that:

- (i) the disputed domain name reproduces the Mark, in which the Complainant has rights, and is confusingly similar to the Mark insofar as the disputed domain name contains the Mark in its entirety. The misplacing of the letter "s" in the disputed domain name and the addition of the letters "uk" do not serve to distinguish the disputed domain name from the Mark.
- (ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name, by which he is not commonly known. Furthermore, the Complainant contends that it never licensed the Respondent to use the Mark in any manner or consented to such use, and that the Respondent never had any business connection or affiliation with the Complainant.
- (iii) The Respondent knew of the Mark when registering the disputed domain name and is using it in bad faith by resolving to a parking page with commercial links and configuring MX servers.

The Complainant requests that the disputed domain name be transferred to the Complainant.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

### **6.1. Procedural Aspects - Failure to respond**

As aforementioned, no Response was received from the Respondent.

Under the Rules, paragraphs 5(f) and 14(a), the effect of a default by the Respondent is that, in the absence of exceptional circumstances, the Panel shall proceed to a decision on the basis of the Complaint.

Under paragraph 4(a) of the Policy, it is the Complainant's burden to establish that all three of the required criteria for a transfer of the disputed domain name have been met, even in the event of a default.

Under paragraph 14(b) of the Rules, the Panel is empowered to draw such inferences from the Respondent's default as it considers appropriate under the circumstances.

In this case, the Panel finds that as a result of the default, the Respondent has failed to rebut any of the reasonable factual assertions that are made and supported by evidence submitted by the Complainant. In particular, by defaulting and failing to respond, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy or otherwise, from which the Panel might conclude that the Respondent has any rights or legitimate interests in the disputed domain name, such as making legitimate noncommercial or fair use of the disputed domain name.

### **6.2. Requirements of paragraph 4(a) of the Policy**

#### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

Although the letter "s" in the element CONSTRUCTION of the Mark has been moved to the end of that word in the disputed domain name, the entirety of the Mark is reproduced within the disputed domain name.

Although this typosquatting and the addition of the letters "uk" after the Mark in the disputed domain name may bear on the assessment of the second and third elements, the Panel finds that these differences do not prevent a finding of confusing similarity between the disputed domain name and the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8 and 1.9.

Accordingly, the disputed domain name is confusingly similar to the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

It is also well established that a generic Top-Level Domain ("gTLD"), such as ".com", does not generally affect the assessment of a domain name for the purpose of determining identity or confusing similarity. [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds the first element of the Policy has been established.

## **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel finds that the composition of the disputed domain name, in effect typosquatting the Mark and adding “uk” (i.e., the country code of the United Kingdom), points to an intention to confuse Internet users seeking for or expecting the Complainant’s subsidiary Bouygues Construction.

Further, in the present case, the disputed domain name resolves to a parking page with commercial links. The Panel finds that the disputed domain name is confusingly similar to the Mark and is targeting Internet users seeking the services of the Complainant’s subsidiary, with a risk of phishing activity, since MX servers were configured on the disputed domain name. Such circumstances cannot be considered as a bona fide offering of goods or services.

The Panel finds the second element of the Policy has been established.

## **C. Registered and Used in Bad Faith**

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that the Respondent has failed to provide any exculpatory information or persuasive reasoning that might have led the Panel to question the Complainant’s arguments that the Respondent acted in bad faith by creating confusion to the detriment of the Complainant by registering the disputed domain name which is confusingly similar to the Mark.

Considering the fact that the disputed domain name resolves to a parking page displaying commercial links, the Panel finds it impossible to believe that the Respondent, who is reportedly located in France (where the Complainant is headquartered), was unaware of the Mark prior to its registration of the disputed domain name.

In this case, the Respondent, whose primary intention was likely to deceive Internet users and unfairly capitalize on the Mark, has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Mark, and the Respondent has furthermore used the disputed domain name to configure MX servers, thus enabling him to generate email addresses, this fact creating an actual and ongoing threat to the Complainant.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that the Complainant has established the third element of the Policy.

## **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <bouygues-contructionsuk.com> be transferred to the Complainant.

*/Louis-Bernard Buchman/*

**Louis-Bernard Buchman**

Sole Panelist

Date: August 12, 2024